J. Thakur

Before A.K.Sikri, CJ, Hemant Gupta, Rajiv Narain Raina, JJ.

RAM MURTI SARIN & OTHERS—*Petitioners*

versus

STATE OF HARYANA & OTHERS—*Respondents*

CWP No.18567 of 2012

1st February 2013

Constitution of India, 1950 - Art. 226, 227 - Land Acquisition Act, 1884 - Land of Petitioners sought to be acquired vide notification issued under S.4 of Land Acquisition Act - Land notified under S.6 of the Act - Award published - Challenge to land acquisition proceedings - During the hearing of writ petition High Powered Committee formed to consider the representation of release of land of the Petitioners - Rejection of representation by High Powered Committee - Order of High Powered Committee rejecting representation of Petitioners for release of land challenged by way of writ petition - Whether the concession of State to constitute High

Powered Committee to determine if any land or part thereof requires to be released is contrary to scheme of Act - Whether the Court can direct consideration of the question of release of land through the medium of High Powered Committee - Held that State Government is within its executive power to seek information of such person or authority before it exercises jurisdiction conferred on it but final decision can be only by the State Government and that too by way of notification.

Held, that the State Government is competent to constitute such Committee as it considers appropriate in exercise of its executive powers, in terms of Article 162 of the Constitution, to consider the report of the Land Acquisition Collector before publication of notification under Section 6 of the Act. But once notification under Section 6 of the Act is published, the only power available with the State Government before announcing of the Award is the approval to the award in terms of proviso to Section 11 of the Act. The State Government has also the jurisdiction to correct the illegalities and irregularities in the procedure adopted by the Collector under Section 15A of the Act. Such power of the State Government is in respect of the proceedings after publication of the notification under Section 6 of the Act, as the satisfaction of the State had been recorded at the time of publication of the notification under Section 6 of the Act, but before the vesting of land absolutely in the State. Such power is limited to satisfy the legality and propriety of any finding or order passed or as to the irregularity of any such proceedings taken by the collector.

(Para 12)

Further held, that the power of the State Government under Section 15A of the Act is in respect of only those issues, which the Collector has a jurisdiction to undertake after publication of notification under Section 6 of the Act i.e. determination of compensation in terms of Section 9 to 11 of the Act. The State Government having published notification under Section 6 of the Act can allow the proceedings to lapse either by not approving the Award or by not paying the compensation even after the Award is approved under Section 11 of the Act. But one the Award is announced, compensation deposited and the possession is taken, the land vests with the State free from all encumbrances. The State Government is free to use land, as it may consider appropriate for a public purpose.

(Para 13)

Further held, that Therefore, in the light of such enunciation of principles of law that after vesting of a land with the State Government, the State Government can withdraw from acquisition only by way of a publication of notification under Section 48 of the Act and not otherwise.

(Para 21)

Further held, that However, the State Government in exercise of its executive powers can take report or suggestion from any person or authority including the High Powered Committee before it discharges the statutory functions either before the publication of the notification under Section 6 of the Act or before deciding to withdrawal from acquisition in terms of Section 48 of the Act. But the final order of withdrawal of acquisition has to come from the State Government and not from the High Powered Committee.

(Para 24)

Further held, that therefore, the State Government in exercise of its executive powers can constitute High Powered Committee before publication of declaration under Section 6 of the Act or at the time of withdrawal from acquisition under Section 48 of the Act. But the power under Section 15A of the Act is akin to revisional jurisdiction in exercise of quasi judicial functions and has to be exercised keeping in view the principles of natural justice, equity and good conscious as well as in accordance with law.

(Para 16)

Further held, that:

(i) The State Government is within its executive powers to seek opinion of such person or authority before it exercises jurisdiction conferred on it under the provisions of Land Acquisition Act, 1894 i.e. under Section 6 or under Section 48 of the Act but the final decision can be only by the State Government and too by way of the notifications; and

(ii) But if the possession has not been taken by the Land Acquisition Collector as per the Award announced by it, the State Government can allow the acquisitions proceedings to lapse

without publication of notification under Section 48 of the Act, if it is no longer interested in acquisition of land.

(Para 27)

Ashish Aggarwal, Senior Advocate, with Neeraj Gupta, Advocate, *for the petitioners.*

Hawa Singh Hooda, Advocate General, Haryana, with Kamal Sehgal, Addl. Advocate General, Haryana, *for respondent Nos. 1 to 5.*

D.V. Sharma, Senior Advocate, with Harit Sharma, Advocate, *for respondent No. 6.*

HEMANT GUPTA, J.

(1) The following questions can be said to arise in terms of the order 19.09.2012 of the Division Bench of this Court for authoritative decision by the Larger Bench:

"(i) Whether the concession of the State to the constitute a High Powered Committee to determine as to whether any land or part of the land acquired requires to be released, is contrary to the scheme of the Act?

(ii) Whether the Court can direct consideration of the question of release of land through the medium of the High Powered Committee?"

(2) The said questions have arisen out of the fact that the land of the petitioners and other land-owners measuring 3325.52 acres was intended to be acquired for a public purpose namely 'for the development and utilization as residential and commercial, Sector–2, Sonepat' vide notification dated 19.10.2001 issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act'). The petitioners filed objections to the said notification as contemplated under Section 5A of the Act. But subsequently after giving an opportunity of hearing to the land owners, the notification under Section 6 of the Act was published on 18.10.2002 releasing a small chunk of land measuring 8-10 acres. After publication of the Section 6 notification, the petitioners entered into a collaboration agreement with the colonizer/builders

for the development of residential and commercial projects. Thereafter, the petitioners through their colonizer/ builders submitted an application on 13.09.2004 for grant of license under the Haryana Urban Development Regulation Act, 1975 and under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963. After the said application was submitted, the Land Acquisition Collector announced Award on 14.10.2004 even in respect of land for which the petitioners had submitted application for license. It is asserted in the petition that the petitioners through the colonizer were asked to deposit the deficit license fee to the tune of Rs.56,43,602/- vide communication dated 17.12.2004.

(3) The petitioners filed writ petition bearing CWP No.18423 of 2004 since the physical possession of the writ petitioners was under threat as award was to be announced. But the said writ petition was withdrawn. Thereafter, two other writ petitions bearing CWP No.7992 of 2005 and CWP No.7997 of 2005 were filed. During the course of hearing of the said petitions, the State showed their willingness to constitute a High Powered Committee to examine the various grievances raised by the writ petitioners and after giving an opportunity of hearing. The bunch of other writ petitions along with the writ petitions filed by the petitioners was disposed of by this Court on 16.07.2005 by passing the following order:

"At the outset, Shri Hawa Singh Hooda, learned Advocate General, Haryana has offered that the State Government is ready to constitute a High Powered Committee comprising of following officers:

1. Financial Commissioner –cum- Principal Secretary, Town & Country Planning, Haryana, Chandigarh.
2. Director, Town & Country Planning, Haryana, Chandigarh.
3. Additional Director, Urban Estates, Haryana, Chandigarh.
4. Chief Town Planner, Haryana, Chandigarh.

Shri Hooda states that the aforesaid High Powered Committee shall examine the various grievances raised by the writ petitioners and if the petitioners file a detailed representation, detailing out the aforesaid grievances, alongwith supporting documents, the

same shall be gone into by the aforesaid High Powered Committee. It has also been suggested by Shri Hooda that the aforesaid High Powered Committee shall also grant an opportunity of personal hearing to a representative of the land owners in each case and take a decision in the matter thereafter. Shri Hooda has also stated that before a decision is taken by the aforesaid High Powered Committee, a policy shall be formulated by the Committee, on the basis of which the grievances of the various petitioners shall be examined and the aforesaid policy shall be formulated by the committee keeping in view the past policies and earlier instructions. The aforesaid policy decision shall be made available to the writ petitioners desirous of getting a copy thereof. The aforesaid committee shall be constituted on or before July 31, 2005 and the policy shall be formulated and shall be available in the office of Additional Director, Urban Estate, Haryana, Chandigarh on August 12, 2005.

The offer made by the learned Advocate General duly satisfies all the learned counsel for the petitioners appearing in the various writ petitioners. The learned counsel for the writ petitioners state that the writ petitioners shall file comprehensive representations detailing out their grievances, accompanied by various supporting documents, on or before August 31, 2005 in the office of Additional Director, Urban Estates, Haryana, Chandigarh.

On receipt of the aforesaid representations, the aforesaid committee shall communicate a date to the petitioner(s) or his/their representative(s) on which date the aforesaid representation shall be considered by the aforesaid committee. The petitioner(s) or his/their representative(s) may appear before the committee on the aforesaid date. It is also agreed by the learned counsel for the petitioners that if on the aforesaid date, the petitioner(s) or his/their representative do not appear, then the committee shall be entitled to take a final decision on its own on the basis of the representations itself.

Shri Hooda is very gracious enough he further state that any earlier adverse decision against the writ petitioners shall not influence the reconsideration of the matter by the present High Powered Committee. He further states that till a final decision is taken by the Committee and for a further period of 15 days, the petitioners shall not be dispossessed from the acquired land.

It is also agreed by the learned counsel for the parties that in view of the provisions of Section 11-A of the Land Acquisition Act, the period for which the dispossession of the writ petitioners would/ has remained stayed shall not be taken into consideration for pronouncement of the ultimate award against the petitioners, if so required. The learned counsel for the petitioners also concede that they have no objection if the Land Acquisition Collector chooses to pronounce the award with regard to the remaining land owners, who are not before this Court in the present writ petitions.

The present writ petitions are disposed of in terms of the aforesaid consent of the learned counsel for the parties. However, it is made clear that the writ petitioners shall be at liberty to approach this court, yet again, in case any further grievance is left after the final decision of the committee.

A copy of the order be made available to the learned Advocate General, Haryana without any charges by the office and to the learned counsel for the parties Dasti on payment of usual charges."

(4) The grievance of the petitioners is that their application for license submitted through the colonizer/ builders was pending consideration, but the High Powered Committee, constituted in terms of the concession given by the learned Advocate General, Haryana, rejected the representation of the petitioners for release of land, inter alia, for the reason that the application for grant of license was returned and that the developer had been informed vide communication dated 06.09.2012. Challenge in this writ petition is to the order of the High Powered Committee.

(5) When the present writ petition came up for hearing before this Court, it was noticed that the constitution of High Powered Committee is not only *de hors* the scheme of acquisition contained in the Act, but is in contravention of the provisions thereof. Once the Award is announced, the land vests with the State Government free from all encumbrances and the State is competent to take possession subject to the right of the State under Section 48 of the Act to withdraw from the acquisition of any land of which possession has been taken, and that too, by notification. Since in large number of cases, the State Government has conceded to the constitution of the High Powered Committee, the Bench found such procedure adopted appears to be extra legal. It is, in these circumstances, the matter has been placed before this Bench to consider the above mentioned questions.

(6) In the reply filed, it is *inter alia* averred that the State Government is empowered under Section 15A of the Act to call for records for satisfying itself of the legality or propriety of the findings or order passed or as to regularity of the proceedings and may pass such order or issue such directions as it may think fit. Since large number of writs were filed alleging procedural lapses by the Land Acquisition Collectors, it was appropriate for the Government to offer to examine the process by calling the record relating to acquisition and its examination by a Committee consisting of senior officers. It is also averred that the State Government offered to re-examine the grievances of such land-owners by exercising the enabling powers available under Section 48(1) of the Act. The High Powered Committee formulated policy parameters for considering the representations submitted by the various land-owners including the petitioners. The High Powered Committee has considered the claim of all such petitioners and decided their representations in accordance of law.

(7) Mr. Ashish Aggarwal, learned senior counsel for the petitioners, has argued that the State Government has offered the constitution of High Powered Committee to consider the grievances of the petitioners and such other land-owners. It is argued that if the High Powered Committee was not competent to decide the issue of release of land, the petitioners would have a right to challenge the acquisition by seeking revival of the earlier petition, but the petitioners cannot be left remediless.

(8) On the other hand, Mr. Hawa Singh Hooda, learned Advocate General, Haryana, argued that the State Government in exercise of its executive powers and to discharge statutory functions could constitute such Committee, as it considers appropriate. Thus, there is nothing illegal about the constitution of High Powered Committee.

(9) Before we consider the respective contentions raised by the learned counsel for the parties, some of the statutory provisions of the Land Acquisition Act, 1894 need to be extracted. The same read as under:

> "6. **Declaration that land is required for a public purpose**– (1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under Section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Section 4, sub-section (1) irrespective of whether one report or different reports has or have been made wherever required under Section 5A, sub-section (2);
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> xxx xxx xxx"
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> "11. **Enquiry and award by Collector** - xx xx Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf:
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> xxx xxx xxx"
>
> "15A. **Power to call for records, etc.** The appropriate Government may at any time before the award is made by the Collector under Section 11 call for any record of any proceedings (whether by way of enquiry or otherwise) for the purpose of satisfying itself as to the legality or propriety of any

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finding or order passed or as to the regularity of such proceedings and may pass such order or issue such direction in relation thereto as it may think fit;

Provided that the appropriate Government shall not pass or issue any order or direction prejudicial to any person without affording such person a reasonable opportunity of being heard."

"16. **Power to take possession** – When the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances."

"48. **Completion of acquisition not compulsory, but compensation to be awarded when not completed** – (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

(A) Role of State Government before announcing of Award

(10) The State Government has different roles to perform in the process of acquisition of land starting from initial publication of intention to acquire land under Section 4 of the Act. Firstly the State Government is to consider the report made by the Land Acquisition Collector under Section 5A of the Act to record satisfaction that the land notified under Section 4 is required to be acquired for a public purpose.

(11) Once Section 6 notification is published, it is the Collector, who is to conduct an inquiry so to determine the amount of compensation and announce Award in terms of Section 11 of the Act though the award itself is required to be approved by State Government in terms of proviso to Section 11 of the Act. Such inquiry conducted by the Land Acquisition Collector is quasi judicial proceeding, which determines the right of the person interested in respect of the amount of compensation and give them an opportunity to seek enhancement of compensation, if any land owner is not satisfied with the amount of compensation so awarded. After the announcement of the Award, it is the Collector who takes possession of the land, which thereupon vests absolute with the State free from all encumbrances.

(12) The State Government is competent to constitute such Committee as it considers appropriate in exercise of its executive powers, in terms of Article 162 of the Constitution, to consider the report of the Land Acquisition Collector before publication of notification under Section 6 of the Act. But once notification under Section 6 of the Act is published, the only power available with the State Government before announcing of the Award is the approval to the award in terms of proviso to Section 11 of the Act. The State Government has also the jurisdiction to correct the illegalities and irregularities in the procedure adopted by the Collector under Section 15A of the Act. Such power of the State Government is in respect of the proceedings after publication of the notification under Section 6 of the Act, as the satisfaction of the State had been recorded at the time of publication of the notification under Section 6 of the Act, but before the vesting of land absolutely in the State. Such power is limited to satisfy the legality and propriety of any finding or order passed or as to the irregularity of any such proceedings taken by the collector.

(13) The power of the State Government under Section 15A of the Act is in respect of only those issues, which the Collector has a jurisdiction to undertake after publication of notification under Section 6 of the Act i.e. determination of compensation in terms of Section 9 to 11 of the Act. The State Government having published notification under Section 6 of the Act can allow the proceedings to lapse either by not approving the Award or by not paying the compensation even after the Award is approved under Section 11 of the Act. But one the Award is announced, compensation

deposited and the possession is taken, the land vests with the State free from all encumbrances. The State Government is free to use land, as it may consider appropriate for a public purpose.

(B) Role of the State Government after Announcing of Award

(14) After the Land Acquisition Collector announces Award and takes possession, in terms of Section 16 of the Act, the land vests absolutely with the State Government free from all encumbrances. In large number of cases, the land owners dispute the action of the State Government in taking of the possession. The questions required to be examined are:

(i) When the Land Acquisition Collector deposits the amount of compensation and takes symbolic possession; or

(ii) When after deposit of compensation, actual physical possession is taken.

(15) The Supreme Court in **Prahlad Singh & others** *versus* **Union of India & others (1), Raghbir Singh Sehrawat** *versus* **State of Haryana & others (2)** and **Patasi Devi Vs. State of Haryana & others** (Civil Appeal No.6183 of 2012) decided on 29.08.2012, has examined the question of maintainability of the writ petition when the actual physical possession is proved to have been not taken after announcing of the Award.

(16) The right of the land-owner to challenge the acquisition for the reason that actual physical possession has not been take would stands on a different footing than the right of the State Government to withdraw from the acquisition after announcing of the Award. The Award is announced and the compensation determined after approval of the State Government under proviso to Section 11(1) of the Act. Once the State Government has approved the amount of compensation and the Collector has announced the Award; amount of compensation is deposited and the award recites that the possession is taken, the vesting of land is complete in favour of the State though the land-owner may still have a right to impugn the acquisition in terms of the judgments referred to above. Thereafter the State Government

(1) (2011) 5 SCC 386
(2) (2012) 1 SCC 792

can act to withdraw from the acquisition only by publication of notification under Section 48 of the Act after the announcing of Award; deposit of amount of compensation and the recital of taking possession.

(17) In **Murari & others *versus* Union of India & others (3)** the Supreme Court examined the scope of Section 48 of the Act. It was held that the withdrawal from acquisition vide a communication is invalid. It was observed as under:

> "17. Here it would be relevant to refer to some of the decisions of this Court on the question of release of the land under Section 48 and its validity under the law. In the case of Chandra Bansi Singh & Ors. Vs. State of Bihar & Ors. 1984 (4) SCC page 316 this Court observed that perhaps the appellants wanted to persuade this Court to strike down the entire notification so that when a fresh notification is issued they may be able to get a higher compensation in view of sudden spurt and rise in the price of land and other commodities in between the period when the acquisition was made and when the actual possession was taken. This Court took the view that it was not acceptable to uphold the aforesaid process of reasoning. The release was declared to be bad as a result of which the entire notification issued under Section 4 would be deemed to be valid and the land specially belonging to the land owner would form part of the acquisition. It has been further held that the release being a separate and subsequent act of the Collector, could not invalidate the entire notification but would only invalidate the portion released, with the result that the original notification would be restored to its position as it stood on the date of its notification. Assuming therefore, that there was release of certain areas of land belonging to certain land owners, the entire notification could not be rendered invalid. Further this Court in a recent decision rendered in State of Maharashtra Vs. Uma Shankar Rajabhau & JT 1995 (8) SC 508 took the view in para 3 of the report as follows:-
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> "It is brought to our notice that after the notification was quashed by the High Court, no further steps were taken by the Government. It is not necessary since it is being challenged

(3) (1997) 1 SCC 15

in the appeal in respect of these three plots. A submission was made that the Corporation does not need these three plots of lands for the employees. So long as there is no notification published under Section 48(1) of the Act withdrawing from the acquisition, the Court cannot take notice of any subsequent disinclination on the part of the beneficiary."

18. The same view was expressed by this Court in yet another decision in the case of U.P. Jal Nigam Vs. M/s Kalra Properties (P) Ltd. In this view of the matter even if we assume that there was an order for release of certain land from the acquisition the same could not be given effect to in the absence of a notification denotifying the acquisition of land."

(18) In **M/s Larsen and Toubro Ltd. etc. *versus* State of Gujarat & others (4)** the Supreme Court observed as under:

"30. It was submitted by Mr. Salve that Section 48 of the Act did not contemplate issue of any notification and withdrawal from the acquisition could be by order simpliciter. He said that Section 4 and 6 talked of notification being issued under those provisions but there was no such mandate in Section 48. It was thus contended that when statute did not require to issue any notification for withdrawal from the acquisition, reference to Section 21 of the General Clauses Act was not correct. Section 21 of the General Clauses Act is as under:

"21. Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws.- Where by any Central Act, or Regulation, a power to issue notification orders, rules, or bye-laws is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction, and conditions, if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

(4) (1998) 4 SCC 387

Mr. Salve said that Section 21 expressly referred to the powers being given to issue notifications etc. under an Act or Regulations and under this that poser included power to withdraw or rescind any notification in the similar fashion. It was therefore submitted that when Section 48 did not empower the State Government to issue any notification and it could not be read into that provision that withdrawal had to be issued by a notification. His argument, therefore, appeared to be that on correct interpretation of Section 21 of the General Clauses Act before reaching the stage of Section 48, the State Government could withdraw notifications under Sections 4 and 6 of the Act by issuing notification withdrawing or rescinding earlier notifications and that would be the end to the acquisition proceedings. We do not think that Mr. Salve is quite right in his submissions. When Sections 4 and 6 notifications are issued, much has been done towards the acquisition process and that process cannot be reversed merely be rescinding those notification. Rather it is Section 48 under which, after withdrawal from acquisition is made, compensation due for any damage suffered by the owner during the course of acquisition proceedings is determine and given to him. It is, therefore, implicit that withdrawal from acquisition has to be notified.

31. Principles of law are, therefore, well settled. A notification in the Official Gazette is required to be issued if the State Government decides to withdraw from the acquisition under Section 48 of the Act of any land of which possession has not been taken."

(19) The Supreme Court in a judgment reported as **Shanti Sports Club & another *versus* Union of India & others (5),** observed as under:

"27. ....As a necessary concomitant, it must be held that the exercise of power by the government under Section 48(1) of the Act must be made known to the public at large so that those interested in accomplishment of the public purpose for which

(5) (2009) 15 SCC 705

the land is acquired or the concerned company may question such withdrawal by making representation to the higher authorities or by seeking courts intervention. If the decision of the Government to withdraw from the acquisition of land is kept secret and is not published in the official gazette, there is every likelihood that unscrupulous land owners, their agents and wheelerdealers may pull strings in the power corridors and clandestinely get the land released from acquisition and thereby defeat the public purpose for which the land is acquired. Similarly, the company on whose behalf the land is acquired may suffer incalculable harm by unpublished decision of the Government to withdraw from the acquisition.

28. The requirement of issuing a notification for exercise of power under Section 48(1) of the Act to withdraw from the acquisition of the land can also be inferred from the judgments of this Court in Municipal Committee, Bhatinda v. Land Acquisition Collector and others (1993) 3 SCC 24 (para 8), U.P. State Sugar Corporation Ltd. v. State of U.P. and others (1995) Supp 3 SCC 538 (para 3), State of Maharashtra and another v. Umashankar Rajabhau and others (1996) 1 SCC 299 (para 3) and State of T.N. and others v. L. Krishnan and others (1996) 7 SCC 450 (para 7). In Larsen & Toubro Ltd. v. State of Gujarat and others (1998) 4 SCC 387, the Court considered the question whether the power under Section 48(1) of the Act can be exercised by the Government without notifying the factum of withdrawal to the beneficiary of the acquisition. It was argued that in contrast to Sections 4 and 6, Section 48(1) of the Act does not contemplate issue of any notification and withdrawal from the acquisition can be done by an order simpliciter. It was further argued that power under Section 21 of the General Clauses Act can be exercised for withdrawing notifications issued under Sections 4 and 6. While rejecting the argument, the Court observed:

xxx xxx xxx"

(20) Another judgment, which needs mention, is **Rajinder Singh Bhatti & others** ***versus*** **State of Haryana & others (6).** In the said case, the Land Acquisition Collector did not announce any Award within two years of publication of declaration under Section 6 of the Act. The land-owners thereafter filed an application for compensation in terms of sub-clause (2) of Section 48 of the Act. Such claim was declined. The Supreme Court observed that failure on the part of the Collector to make Award within the period prescribed entails lapse of acquisition proceedings. But on the other hand, Section 48 of the Act empowers the Government to withdraw from acquisition of any land of which possession has not been taken. The Court examined the following two questions:

> "(one) Whether in view of the decision of the government in not approving the award proposed by the Collector, the award could not be made within the period of two years from the date of publication of declaration (final notification under Section 6) and the acquisition of land lapsed, would such lapse of acquisition proceedings amount to withdrawal from the acquisition by the State Government under Section 48(1) of the Act?
>
> (two) Whether the decision of the State Government for withdrawal from the acquisition under Section 48(1) is mandatorily required to be published in the official gazette?"

In respect of first question, the Court held as under:

> "26. As noticed above, the Land Acquisition Collector moved the government seeking its approval for the proposed award. This was imperative as per the first proviso to Section 11. The government considered the matter and did not approve the proposed award. When no such approval was granted by the government, the Collector could not have made the award and in fact he did not. As a result thereof, the acquisition proceedings lapsed. The lapse of acquisition proceedings in the circumstances under Section 11-A cannot and would not amount to withdrawal from acquisition by the government under Section 48(1). We answer the point (one) in negative."

(6) (2009) 11 SCC 480

(21) However, in respect of second question, the Court followed the judgment in Larsen & Toubro Ltd. case (supra) that the decision of the Government for withdrawal of acquisition has to be published in official gazette. Therefore, in the light of such enunciation of principles of law that after vesting of a land with the State Government, the State Government can withdraw from acquisition only by way of a publication of notification under Section 48 of the Act and not otherwise.

(22) In a judgment reported as **Delhi Airtech Services (P) Ltd.** ***versus*** **State of U.P. (7),** the Supreme Court noticed the fact that after the land is vested in the State Government then neither the Government nor the Court can take recourse to the provisions of Section 48(1) of the Act. It was observed as under:

> "190.In the case of an ordinary acquisition, if the land has vested in the State Government then neither the Government nor the court can take recourse to the provisions of Section 48(1) of the Act, there the question of applying Section 11-A of the Act to acquisition proceedings under Section 17 of the Act cannot arise, as it would tantamount to achieving something indirectly which would be impermissible to be achieved directly. For all the above reasons, I hold that Section 11-A of the Act has not application to the acquisition proceedings under the provisions of Section 17 of the Act."

(23) It is conceded by Mr. Hooda that in pursuance of the recommendations of the High Powered Committee for withdrawal from acquisition, no notification under Section 48 of the Act has been published. We find that the withdrawal of acquisition only on the basis of the report of the High Powered Committee is contrary to the scheme of the Act and is illegal. The withdrawal from acquisition has to be by way of a notification and by following the same process as is required in the manner of acquisition.

(24) However, the State Government in exercise of its executive powers can take report or suggestion from any person or authority including the High Powered Committee before it discharges the statutory functions either before the publication of the notification under Section 6 of the Act

(7) (2011) 9 SCC 354

or before deciding to withdrawal from acquisition in terms of Section 48 of the Act. But the final order of withdrawal of acquisition has to come from the State Government and not from the High Powered Committee.

(25) Therefore, the State Government in exercise of its executive powers can constitute High Powered Committee before publication of declaration under Section 6 of the Act or at the time of withdrawal from acquisition under Section 48 of the Act. But the power under Section 15A of the Act is akin to revisional jurisdiction in exercise of quasi judicial functions and has to be exercised keeping in view the principles of natural justice, equity and good conscious as well as in accordance with law.

(26) However, the present is a case, the High Powered Committee was constituted after the Award was announced and the Land Acquisition Collector handed over possession on 14.03.2006. The State Government has issued notification dated 26.04.2006 under Section 48 of the Act for land measuring 42 acres, 1 kanal & 11 marlas. Therefore, release of the remaining land, if any is not supported by Statute.

(27) In view of the above, we hold that:

(i) The State Government is within its executive powers to seek opinion of such person or authority before it exercises jurisdiction conferred on it under the provisions of Land Acquisition Act, 1894 i.e under Section 6 or under Section 48 of the Act but the final decision can be only by the State Government and too by way of the notifications; and

(ii) But if the possession has not been taken by the Land Acquisition Collector as per the Award announced by it, the State Government can allow the acquisitions proceedings to lapse without publication of notification under Section 48 of the Act, if it is no longer interested in acquisition of land.

Having answered the question of law, in the manner above, the matter be placed before the appropriate Bench as per roster.

J. Thakur